



**[Securities Act of 1933 Release No. 11027 / February 8, 2022; Securities Exchange Act of 1934 Release No. 94187 / February 8, 2022]**

**Order Regarding Review of FASB Accounting Support Fee for 2022 under Section 109 of the Sarbanes-Oxley Act of 2002**

The Sarbanes-Oxley Act of 2002 (“SOX” or the “Act”) provides that the Securities and Exchange Commission (the “Commission”) may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria.<sup>1</sup> Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the “recoverable budget expenses” of the standard-setting body. Section 109(i) of SOX amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body

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<sup>1</sup> See 15 U.S.C. 7201 *et seq.*

under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under Section 108 of the Act.<sup>2</sup> Accordingly, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2022.<sup>3</sup> In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2022.

Section 109 of SOX provides that, in addition to the accounting support fee, the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2022 accounting support fee is sequestrable under the Budget Control Act of 2011.<sup>4</sup> So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

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<sup>2</sup> See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33-8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

<sup>3</sup> The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 16, 2021. The FAF submitted the approved budget to the Commission on November 22, 2021.

<sup>4</sup> See OMB Report Pursuant to the Sequestration Transparency Act of 2012, *available at* [https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration\\_report\\_FY21\\_2-10-20.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf). The sequestration percentages calculated for FY 2021 will be applied in each of the fiscal years from 2022 to 2029.

After its review, the Commission determined that the 2022 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

**Vanessa A. Countryman,**

*Secretary.*

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